APPENDIX D-1

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

KINNEAR-WEED CORPORATION,
Plaintiff

vs.

HUMBLE OIL & REFINING COMPANY,
Defendant

CIVIL ACTION NO. 2363

FILED

.... M. Jan. 17, 1955

James R. Cooney, Clerk, U.S. Court
By Thomas R. King, Deputy

PLAINTIFF'S FIRST AMENDED ORIGINAL COMPLAINT

With leave of court first had and obtained, Kinnear-Weed Corporation, Plaintiff herein, files this, Plaintiff's FIRST AMENDED ORIGINAL COMPLAINT and alleges and charges as follows:

* * * * * * * * * * * * * * * * * * *

(13) WHEREFORE THE PLAINTIFF PRAYS:

(a) For a decree adjudging that the Plaintiff's said listed patents in paragraph Five (5) above, are good and valid and owned by plaintiff and have been infringed by the defendant;

(b) That plaintiff recover judgment from defendant for infringement of plaintiff's patents in suit in the sum of $3,081,600.00, and, that in view of the *willful* and flagrant character of the infringement, the amount of the damages therefore be increased to a sum of three times the amount thereof as provided by law;

(c) That plaintiff recover judgment from defendant for violation of confidential relationship and unjust enrichment in the sum of $77,400,000.00;

(d) That plaintiff recover judgment from defendant for unfair competition and unfair trade practices in the sum of $94,170,000.00;

(e) That the defendant may be decreed to pay damages to plaintiff for defendant's violation of the Monopoly or Anti-trust Laws of the State of Texas and/or the United States in suit for the sum of Twenty-five Million Dollars, ($25,000,000.00), and treble damages, as provided by 15 U.S.C., Section 15 (Title 15, Section 15, U.S.C.)

(f) That the defendant may be decreed to pay the costs, charges, disbursements of this suit.

(g) That the plaintiff may have such other and further relief in the premises as the case may require, and to the Court may seem meet and Just.

KINNEAR-WEED CORPORATION
By: /s/ William E. Kinnear
William E. Kinnear
321 American Nat'l Bank Bldg.
Beaumont, Texas
ATTORNEY FOR PLAINTIFF

STATE OF TEXAS
COUNTY OF JEFFERSON

Clarence Wellington Kinnear, being duly sworn deposes and says that he is President of Kinnear-Weed Corporation, Complaint; that he has read said complaint and that the

plaintiff named in the foregoing First Amended Original facts therein stated are true except as to such facts as may be stated on information and belief, and as to such facts he believes them to be true; and the reason why this verification is not made by the plaintiff personally is that the said plaintiff is a corporation of which affiant is an officer.

/s/ Clarence Wellington Kinnear

Subscribed and sworn to before me this 14th day of January, 1955.

/s/ J. W. Kinnear
(J. W. Kinnear)
Notary public in and for
Jefferson County, Texas

(Service of copy acknowledged by Defendant January 14, 1955.)

/s/ B. D. Orgain
Attorney for Defendant

APPENDIX D-2

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

KINNEAR-WEED CORPORATION,
Plaintiff

vs.

HUMBLE OIL & REFINING COMPANY,
Defendant

CIVIL ACTION NO. 2363

FILED
__ M. Jan. 17, 1955
James R. Cooney, Clerk, U.S. Court
By Thomas R. King, Deputy

ORDER ENTERING PLAINTIFF'S FIRST AMENDED ORIGINAL COMPLAINT

On Noember 12, 1954, at Pre-Trial Conference in the above entitled and numbered Civil Action 2363 on page 33 of the Transcript of said Pre-Trial Conference, the Court on its own motion gave all parties leave to amend and on January 14, 1955 Plaintiff filed with the Clerk of said Court Plaintiff's FIRST AMENDED ORIGINAL COMPLAINT and on hearing the motion of Defendant in opposition to said Complaint in open Court on January 17, 1955 the Court overruled Defendant's motion and sustained Plaintiff's FIRST AMENDED ORIGINAL COMPLAINT as filed on January 14, 1955, it is,

Ordered that Plaintiff's FIRST AMENDED ORIGINAL COMPLAINT filed herein on January 14, 1955, be, and the same is hereby entered of record.

/s/ Lamar Cecil
United States District Judge,
Eastern District of Texas,

APPENDIX D-3

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

KINNEAR-WEED CORPORATION,
Plaintiff

vs.

HUMBLE OIL AND REFINING COMPANY,
Defendant

CIVIL ACTION NO. 2363

FILED
.... M. Jan. 14, 1955
James R. Cooney, Clerk, U.S. Court
By Mary G. Wakefield, Deputy

JURY DEMAND

COMES NOW the plaintiff, Kinnear-Weed Corporation, and here and now makes demand for jury trial on all issues herein and requests that said cause be placed upon the jury docket, in view of Plaintiff's First Amended Original Complaint filed of even date herewith.

Dated: January 14th, 1955

WILLIAM E. KINNEAR
321 American Nat'l. Bank Bldg.
Beaumont, Texas
ATTORNEY FOR PLAINTIFF

Service of a copy of the above is acknowledged this 14th day of January, 1955.

B. D. Orgain
ATTORNEY FOR DEFENDANT

GENERAL SERVICES ADMINISTRATION

National Archives and Records Service

To all to whom these presents shall come, Greeting:

By virtue of the authority vested in me by the Administrator of General Services, I certify on his behalf, under the seal of the United States General Services Administration, that the attached reproduction(s) is a true and correct copy of documents in his custody.

SIGNATURE	
/s/ Vincent L. Wiese	
NAME VINCENT L. WIESE	DATE Nov. 26, 1971
TITLE Chief, General Records Section	
NAME AND ADDRESS OF DEPOSITORY Federal Records Center P. O. Box 6216 Fort Worth, Texas 76115	

GSA Form APR 68 **6791E**

(SEAL)

APPENDIX D-4

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

KINNEAR-WEED CORPORATION,
Plaintiff

vs.

HUMBLE OIL AND REFINING COMPANY,
Defendant

CIVIL ACTION NO. 2363

FILED

.... M. Jan. 17, 1955

James R. Cooney, Clerk, U.S. Court

By Thomas R. King, Deputy

MEMORANDUM BRIEF
IN SUPPORT OF
PLAINTIFF'S JURY DEMAND

WILLIAM E. KINNEAR
321 American Nat'l Bank Bldg.
Beaumont, Texas
ATTORNEY FOR PLAINTIFF

STATEMENT

This brief in support of plaintiff's jury demand is made in view of the Jury Demand filed in this case on January 14, 1955 after the filing of plaintiff's First Amended Original Complaint filed in this case on January 14, 1955.

Plaintiff's First Amended Original Complaint is founded in law on all of the claims set forth in said amended complaint, whereas, plaintiff's original omplaint for the claims thereof are partly in law and partly in equity. In view of the Civil Rules of Federal Procedure and the authorities in support thereof set fourth herein clearly show and establish that the plaintiff is entitled to a jury in view of Plaintiff's First Amended Original Complaint and the relief sought therein founded on claims based in law upon causes of action sounding in demand for money judgment for damages constituting the grounds for said causes of action. (FRCP, Rules 2, 38, 39, 28 USCA).

The following cases are cited in support of the proposition that plaintiff's request for jury demand is timely and as a matter of right under Rule 15 of the Federal Rules of Civil Procedure and by authority of the court with leave to amend granted to all parties in this civil action by the Honorable Lamar Cecil, Judge of the United States District Court for the Eastern District of Texas to wit:

In the U. S. Circuit Court of Appeals, Second Circuit, in an opinion by Judge Frank, in the case of BERESLAVSKY vs. CAFFEY, U. S. District Judge (1947) 161 F2d 499-500, held:

> "The judge erred in striking the jury demand, despite the fact that more than ten days had elapsed from the service of the last pleading directed to the issues as made by the original complaint and amended

answer. For, under that complaint, the plaintiff was not entitled to demand a jury, since the relief he sought was exclusively 'in equity,' so that there was then no 'issue triable of right by a jury.' When, by amending his complaint, he abandoned his prayer for such 'equitable' relief, he then, for the first time, was in a position to demand a jury, for only then did there come into being an issue 'triable of right by a jury.' He made his demand well within ten days thereafter."

In the U. S. Circuit Court of Appeals for the Sixth Circuit, in an opinion by Judge Simons, in the case of PERESLAVSKY vs. KLOEB, U. S. District Judge (1947) 162 F. 2d 862-864, at page 862 held:

"The contention that the plaintiff in his amended complaint states no new issue, may be true, but the amended complaint states a different cause of action. In the one case an equitable remedy is sought and damages are but incidental to the main prayer for relief. In the other damages constitute the sole ground for the action. It is our view that the petitioner could not have demanded a jury trial at the time of the original pleading because the suit was then exclusively in equity, even though a right to trial by jury might subsequently have arisen upon an adjudication of validity and infringement. For an application of the principle that one does not, by nonaction, waive a right when there is no basis for choice, and where the elements from which selection must be made and which selection must be made and which alone give it meaning, have not yet come into existence, see Gentsch v. Goodyear Tire & Rubber Co., 6 Cir., 151 F. 2d

997, 1000; Buckley v. C.I.R., 2 Cir., 158 F. 2d 158."

It is respectfully submitted that plaintiff's jury demand as a matter of right entitles plaintiff to the jury timely requested after the filing of plaintiff's First Amended Original Complaint with leave of Court first had and obtained.

Dated: January 17th, 1955.

Respectfully Submitted,

WILLIAM E. KINNEAR
321 American Nat'l Bank Bldg.
Beaumont, Texas

ATTORNEY FOR PLAINTIFF

Service of a copy of the above is acknowledged this 17th day of January, 1955.

/s/Nelson Jones

ATTORNEY FOR DEFENDANT

GENERAL SERVICES ADMINISTRATION

National Archives and Records Service

To all to whom these presents shall come, Greeting:

By virtue of the authority vested in me by the Administrator of General Services, I certify on his behalf, under the seal of the United States General Services Administration, that the attached reproduction(s) is a true and correct copy of documents in his custody.

SIGNATURE /s/ Vincent L. Wiese	
NAME VINCENT L. WIESE	DATE Nov. 16, 1971
TITLE Chief, General Records Section	
NAME AND ADDRESS OF DEPOSITORY Federal Records Center P. O. Box 6216 Fort Worth, Texas 76115	

GSA Form APR 68 6791E

(SEAL)

MEMORANDUM BRIEF IN SUPPORT OF PLAINTIFF'S JURY DEMAND

WILLIAM E. KINNEAR
321 American Nat'l Bank Bldg.
Beaumont, Texas

ATTORNEY FOR PLAINTIFF

APPENDIX D-5

UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF TEXAS

DIVISION BEAUMONT
JANUARY 17, 1955
JUDGE LAMAR CECIL
REPORTER HOWARD M. KERRY
CIVIL NO. 2363

KINNEAR-WEED CORP.

Plaintiff

VS

HUMBLE OIL AND REFINING CO.

ATTORNEYS FOR PLAINTIFF—W. E. Kinnear.

ATTORNEYS FOR DEFENDANT—B. D. Orgain, Nelson O. Jones, Garrett R. Tucker, Jr., Frank B. Rugsby, Melvin F. Finche.

This day came the parties by their attorneys and the trial or ---------- proceeded.

1-17-55 Hearing before Judge Cecil. Filed Pltff's Brief in support of motion for Default Judgment against Def.

1-17-55 Court Overrules motion for Default Judgment. Filed Pltff's Brief in support of Jury Demand.

1-17-55 Court Overrules Demand for Jury Trial.

1-17-55 Pltff's motion for Continuance to make a writ of mandamus is denied.

1-17-55 Case Cont. and reset for Feb. 28, 1955.

JAMES R. COONEY, CLERK
BY: THOMAS R. KING, DEPUTY

United States of America)
) *ss:*
EASTERN DISTRICT OF TEXAS)

I, JAMES R. COONEY, Clerk of the United States District Court for the EASTERN District of TEXAS, do hereby certify that the annexed and foregoing is a true and full copy of the original Daily Minute Sheet, dated 1-17-55, in the United States District Court Eastern District of Texas, Beaumont Division, in Civil Case No. 2363, entitled:

KINNEAR-WEED CORPORATION

VS.

HUMBLE OIL AND REFINING COMPANY

now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Beaumont, Texas this 17th day of November, A. D. 1971.

(SEAL)

JAMES R. COONEY, *Clerk*

By Mildred C. Verret, *Deputy Clerk*